1021.

SUPREME COURT OF THE UNITED STATES.

No. 164.

JANE A. COY, IN HER OWN RIGHT, AND AS GUARDIAN OF LUCY, BENJAMIN, MARY, AMELIA, AND MAHITABLE COY, HER MINOR CHILDREN, COMPLAINANTS AND APPELLANTS,

VS.

CHARLES MASON.

IN ERROR TO THE ~~CIRCUIT~~ DISTRICT COURT UNITED STATES FOR THE DISTRICT OF IOWA.

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GIDEON, print.

1022.

Pleas before the United States district court, within and for the district of Iowa, at the southern division of said district, on the 21st day of October, A. D. 1853.

Be it remembered, that heretofore, to wit, on the 23d day of August, A. D. 1853, Jane A. Coy, et als., filed in the clerk's office of said court, by their attorneys, Smith, McKinlay & Poor, their bill in chancery, in the words and figures following, to wit:

UNITED STATES OF AMERICA.

In the district court of the U. S., in and for the district of Iowa, southern division, equity side of said court.

JANE A. COY and others,
vs.
CHARLES MASON.

Bill in Chancery.

To the judge of the district court of the United States, for the district of Iowa.

Jane A. Coy, of Prairie du Chien, in her own right, as well as guardian of Lucy Coy, Benjamin Coy, Mary Coy, Amelia Coy, and Mahitable Coy, her minor children, all citizens of the State of Wisconsin, bring this their bill against Charles Mason, of Burlington, a citizen of the State of Iowa, complainants and defendant being citizens of different States; and thereupon your oratrix complains and says:

That Elizabeth Cardinell, alias Elizabeth Antaga, was a half-breed of the Sac and Fox nation of Indians, and the sister of Euphrasine Antaga, and in her lifetime was entitled to one full original share in what is commonly known as the half-breed tract, situate in Lee county, Iowa. That before the committing of the grievances hereinafter complained of, to wit, in the year 1833, the said Elizabeth died, leaving St. Paul, Eustace, Eli, Pierre, and Julian Cardinell, her children and only heirs. That said St. Paul, Eustace, Eli, Pierre, and Julian, were also half-breeds of the said nation, all born before the 4th of August, 1824, and were entitled, in their own right, each to a share in said tract. That after the 30th of June, 1834, and before the 14th day of April, 1840, all of the said heirs died with the exception of said Julian Cardinell, who was then entitled to receive and was the sole heir and owner of said shares of his mother and brothers in said tract.

That on said 14th day of April, 1840, Josiah Spalding and others filed a petition against said Euphrasine Antaga and others in the office of the clerk of the district court of Lee county, Iowa, for the purpose of obtaining a partition of said tract, and that a decree of partition was rendered at the April term, 1841, of said court. That said proceeding in partition was pending in said court until the October term, 1841, at

which term the said tract was divided into one hundred and one shares among various persons claiming to be the lawful owners thereof. That in said proceeding the petitioners and defendants, in their pleadings, set forth the names of the half-breed or half breeds under whom they claimed, and were required to exhibit their proofs of title, and authentic copies of the conveyances by which the same was held, and each of which (or copy of the same) was required to be filed with the clerk of the court. That Samuel Marsh, William E. Lee, and Edward C. Delevan, trustees for certain claimants in said tract called the New York Company, were made defendants to said petition for partition, and that they, in their answer, laid claim to one share under the said Eustace Cardinell, and two-thirds of a share under said Elizabeth Antaga, by the said Eli Cardinell and the said Eustace Cardinell, heirs, in these words, to wit:

"Elizabeth Antaga, $\frac{2}{3}$ by Eli Cardinall and Eustace Cardinall, heirs."

"Eustace Cardinal one portion."

That the said Marsh, Lee, and Delevan, trustees as aforesaid, filed no title papers or exhibits showing that they were entitled to any such shares; but that they were permitted to draw, and did draw, said one and two-third shares, and that they did receive by their said claim, and by said decree, one and two-third shares to which the said Julian was then entitled.

That the said Julian Cardinell, at the time of the filing of said petition and the rendition of said decree, and the confirmation of the division, was a minor under the age of twenty-one years, and a non-resident of the Territory of Iowa, to wit, a resident of Prairie du Chien, in the then Territory of Wisconsin, and during the whole time of said proceedings for partition was residing at said Prairie du Chien, a distance of more than two hundred miles from the said half-breed tract; and that the intermediate and surrounding country between said Prairie du Chien and said tract was then a wild and sparsely settled country. That he had no notice of said proceeding; that he did not, in any manner, appear, nor did the court appoint any person as guardian to represent his rights; and that no share was set off to him, nor were his rights in any manner recognised by said decree. That the said decree was obtained by consent of parties that did appear in court ex parte to divide the property among themselves, which consent was a fraudulent device and contrivance adopted by those parties for the purpose of defrauding absent persons and those who had received no notice; and that the said decree is fraudulent, null, and void, in consequence of the said illegalities in the proceedings.

That the said Marsh, Lee and Delevan, trustees as aforesaid, had not in any manner derived any right from any source whatsoever, to have or receive the said one and two third shares, or any part, but that the said Julian Cardinell was well entitled to receive and have his mother's, his brothers' and his own share in said tract. And that the said one and two third shares were drawn by the said Marsh, Lee and

Delevan, in their own wrongs and in fraud of the rights of the said Julian Cardinell.

And your oratrix further complaining says, that afterwards, to wit, on the 25th day of February, 1848, the said Julian Cardinell, then being above the age of twenty-one years, and competent to make a deed of conveyance, executed and delivered to A. B. Coy and Peter A. R. Brace a deed of conveyance, by which he sold and conveyed unto said A. B. Coy and said Peter A. R. Brace his entire right, title and interest, estate and claim, whether inherited or otherwise, in the said tract of land.

That said Peter A. R. Brace afterwards, to wit, on the 10th day of February, 1849, died, leaving Nancy R. Brace his widow, and Seba Brace their child, his only heirs; and that the said A. B. Coy, afterwards, to wit, on the 11th day of May, 1849, died, leaving said Jane A. Coy his widow, and said Lucy, Benjamin, Mary, Bradley, Amelia and Mahitable Coy, their minor children, his only heirs; and that the rights of the said Peter A. R. Brace and the said A. B. Coy in the premises became vested in their said widows and heirs; that since the death of said A. B. Coy and said Peter A. R. Brace, the said Marsh, Lee and Delevan, trustees as aforesaid, sold and conveyed their entire interest in said half-breed tract to the said Charles Mason, who then had full knowledge of the illegalities of said decree, and of the rights and equities of the complainants, and of the facts and circumstances concerning the same as herein stated; and further, that there is yet a large portion of the purchase money remaining unpaid by him, and more than sufficient to indemnify him for any loss or claim to be sustained by him by the establishment of the rights of complainants. That the complainants are entitled to receive from the said Charles Mason one half of the average value of one and two third shares in the said tract so wrongfully drawn by the said Marsh, Lee and Delevan, trustees as aforesaid, to the said Charles Mason.

That neither the said Marsh, Lee and Delevan, nor the said Mason, have ever accounted for the said one and two third shares or for any part thereof, but have held out, claimed and pretended to be entitled to the same in their own right, and have denied the rights of complainants. That the said Marsh, Lee and Delevan have had possession of the said one and two third shares, and received the rents and profits of the same from the time of said decree and division down to the summer of 1852, when the same was disposed of to the said Mason as aforesaid, and that he has received the rents and profits from that time hitherto, and that neither of them have ever accounted for any rents and profits.

And your oratrix further complaining says, that the said Marsh, Lee and Delevan and others, then parties to said proceedings in partition, reduced the value of each share in the said tract, far below the real value to which each real owner was entitled, by causing and procuring fictitious shares to be allowed to them in the said partition, and of which the said Charles Mason had notice before he purchased as aforesaid. That there was less than fifty true original half-breeds who were enti-

tled to the said tract, but that your oratrix has not the means of knowing the exact number of shares; that the said tract contains one hundred and twenty thousand acres of land and perhaps more, and is worth at least ten dollars per acre, which would make one share equal to a large sum of money, to wit, a sum exceeding twenty-four thousand dollars.

And your oratrix further says, that the original parties to said proceedings in partition and the present claimants in said half-breed tract are very numerous, amounting to several hundred, and that the names of a great portion of the claimants are unknown to your oratrix; and that they are so very numerous that it is impracticable to make them all parties to this proceeding.

That said Nancy R. Brace and said Seba Brace are citizens of the State of Iowa, and cannot be joined as parties complainant without ousting the jurisdiction of the court as to the parties before it; and that said Marsh, Lee and Delevan are citizens of the State of New York, and cannot be made parties defendant hereto, by reason of their being out of the jurisdiction of the court. And your oratrix prays that process may issue to make them parties to this bill, if they or either of them should come within the jurisdiction of this court.

And your oratrix prays, that the said decree may be impeached and declared fraudulent, null and void, so far as it affects the rights of the parties heteto; that a re-partition may be had of said tract, and that complainants may be allowed their full shares in the same manner as though the same had never been divided.

And that in case the court should be of opinion that a re-partition cannot be granted, that the said Charles Mason may be declared to hold the undivided half of said one and two third shares, so wrongfully obtained by the said Marsh, Lee and Delevan, and sold and conveyed to him in trust for the complainants, and that the same may be specifically conveyed to them; that an account of the value of one and two thirds original full shares, unreduced by fictitious and fraudulent claims, may be awarded to complainants, and that judgment may be rendered in their favor against said Charles Mason for half the amount less the value of the part that may be specifically conveyed to complainants as already prayed for, and in case nothing be so conveyed, that the complainants have judgment for the full half of the amount of such account. And that should the said Marsh, Lee and Delevan ever become parties to this action, that they be compelled to account for the rents and profits aforesaid and that complainants have judgment against them for half the amount thereof; and that said Mason be compelled to account for the rents and profits from the time of his said purchase, and that complainants have judgment against him for half of the amount thereof; and that the complainants have all and such other and further relief as the nature of this case requires and to your honor may seem meet.

May it please your honor to grant unto your oratrix the most gracious writ of subpœna of the United States of America, to be directed to the said Charles Mason, thereby commanding him, under a certain pain therein to be specified, personally to be and appear before your honor

in this honorable court, and then and there to answer all and singular the premises, and to stand to, perform and abide such order and decree therein, as to your honor shall seem meet. And your oratrix shall ever pray.

JANE A. COY.

McKINLAY & POOR,
Solicitors for complainants.
PLATT SMITH,
Counsel for complainants.

On the back of said bill in chancery is the following endorsement, to wit:

Endorsement.

JANE A. COY and others
vs.
CHARLES MASON.

Bill in chancery.

Filed and summons issued, August 3d, 1853.
T. S. PARVIN, *Clerk*,
By O. C. WIGHTMAN, *Dep'ty cl'k*,
SMITH, McKINLAY & POOR.

And afterwards, to wit, on the 17th day of October, 1853, the defendant filed in the office of the clerk of the court aforesaid his demurrer and answer, in the words following, to wit:

Demurrer.

JANE A. COY
vs.
CHARLES MASON.

U. S. district court for the southern district of Iowa.

The defendent demurs and sets forth the following as the causes of demurrer:.

1. The petition does not show that a portion of the defendants are not citizens of the same State as the plaintiff, and therefore this court has no jurisdiction of the case.

2d. The petition does not deny legal service of process by publication, and such service will accordingly be presumed which gave the court entire jurisdiction of the case. The judgment is therefore "binding and conclusive on all persons whomsoever." It cannot be questioned in any tribunal except for fraud, and no sufficient fraud is set forth in the petition.

3d. The judgment of partition was rendered by a competent tribunal of the then Territory, now State of Iowa. This court has no power in such a case as the present to set aside the judgment of a State court, or to correct or modify the same, however erroneous or even fraudulent.

4th. The injustice and injury, if any, was done to Julian Cardinell, who has the sole right to complain, which he has not done.

And as to so much of the said petition as claims damages in consequence of any interest transmitted from Elizabeth Cardinell, by descent, through her children, the defendant further demurs, for that the petition shows that she died prior to the 30th day of June, 1834, the date of the actof Congress which first gave the half-breeds the right to convey, devise, or transmit by descent. And as to all claims growing out of interests claimed from the children of the said Elizabeth, in their own rights, he denies that they or any of them were half-breeds, but that their father was a white man, and they, accordingly, only quarter bloods; consequently they are not entitled to any interest in the tract, either in their own rights or by inheritance.

Answer.

And the said defendant, not waiving his demurrer or answer above set forth, for further answer to said petition says, that he admits that the said Elizabeth Cardinell was a half-breed of the Sac and Fox nation of Indians, and that she died in or previous to the year 1833, leaving the children whose names are stated in the petition, and that they were all born previous to the 4th day of August, 1824. But he denies that any or either of these children were half-breeds of the Sac and Fox nation of Indians, but avers that their father was a white man, and that the children were, therefore, only quarter bloods, and as such were not entitled to any interest in the half-breed tract in their own rights.

He also admits, that after the 30th day of June, 1834, or previous to the 4th day of April, 1840, all the said children of the said Elizabeth died except the said Julian; that on the said 14th day of April, 1840, proceedings were commenced for obtaining a partition of the half-breed tract, which proceedings were consummated at the October term, in 1841, at which time the said tract was divided into one hundred and one shares among various persons claiming to be lawful owners thereof. He further admits that Marsh, Lee & Delevan, trustees, &c., in their answer in the said partition suit, laid claim to one share under the said Eustace Cardinell, and to two-thirds of a share under the said Elizabeth Cardinell, (called Antaga,) by Eli and Eustace Cardinell, heirs, &c. But he denies that the said trustees ever drew or received the said one share and two-thirds of a share, or any portion thereof, as set forth in the said petition, or in any other manner.

He further admits, that at the time of the rendition of said decree or judgment, the said Julian was a minor under twenty-one years of age, and a non-resident of the then Territory of Iowa; that he resided at Prairie du Chien, as stated in said petition; that he had no actual personal notice of the pendency of the proceedings; but he avers that the said Julian had legal notice thereof by means of the public advertisement, which the law then rendered equivalent to a personal service of process; that the rights of the said Julian Cardinell (if he had any) were not recognised by the court, for the simple reason that they were not

made known to it, and that even if there were errors committed by the court, the law had provided a legal mode of correcting those errors; and that although the said Julian was a minor when the judgment of partition was rendered as aforesaid, yet that he became of age long before the time expired when those errors might have been thus corrected.

Defendant admits that the judgmeut of partition aforesaid was rendered by consent of parties, but denies that it was done ex-parte. He avers that there were parties complainant and parties defendant; that all of those who, by appearing, had entitled themselves to any consideration by the court, were present before the court in person or by attorney, and that the said judgment was rendered by the general consent of all. He denies that such consent was given with any fraudulent intent whatever, but for the commendable purpose of avoiding tedious delays and expensive litigation.

And as to the sale by the said Julian Cardinell to the persons mentioned in the said petition, this defendant knows nothing; but asks that the complainant may be required to prove all the material facts connected therewith.

Defendant admits the sale to him by the said Marsh, Lee and Delevan, but denies that at the time of such sale he had any knowledge of any fraud or illegality in said judgment of partition, or of any rights or equities of the said complainant.

He admits that there is a large portion of the purchase money still unpaid by him, but denies that this circumstance will furnish him any indemnity for the loss he will sustain if the claims of the complainants are allowed.

He also denies that either the said Marsh, Lee & Delevan, or himself, have had possession of the land claimed by the said complainant, or that either he or they have ever received any rents or profits therefrom. He further denies that there were less than fifty-two original half-breeds entitled to the said tract, but believes and charges that the number of genuine half-breeds was as great as that allowed in the said judgment. He denies that the said Marsh, Lee and Delevan caused or procured any fictitious shares to be allowed to them in said decree. He also denies that the average value of the land on the half-breed tract is as great as ten dollars per acre, or that it is worth more than from three to five dollars per acre when sold in quantities of a whole share or a fraction of a share at a time.

And having thus fully answered the petition of the said complainant, he prays that he may be dismissed with his reasonable costs.

CHAS. MASON.

On the back of the said demurrer and answer is the following endorsement, to wit:

Endorsement.

JANE A. COY
vs.
CHAS. MASON.

Answer and demurrer.

Filed October 17, 1853.

T. S. PARVIN, *Clerk.*

MASON.

And afterwards, to wit, on the 17th day of October, 1853, the said complainants, by their solicitors, filed their joinder in demurrer and replication in the words and figures following, to wit:

Joinder in demurrer.

JANE A. COY and others
vs.
CHAS. MASON.

U. S. district court for the district of Iowa, southern division.

The plaintiffs join in demurrer in the several causes set forth by defendant.

JANE A. COY,
for herself and as guardian of her children.
SMITH, McKINLAY & POOR,
Solicitors for complainants.

Plaintiff's replication to defendant's answer.

JANE A. COY and others
vs.
CHAS. MASON.

In the district court of the U. S. in and for the district of Iowa, southern division.

This repliant, saving and reserving unto herself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that she will aver and prove her said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by the repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by her said bill she hath already prayed.

JANE A. COY,
for herself and as guardian of her said children.
SMITH, McKINLAY & POOR,
Solicitors for complainants.

On the back thereof is the following endorsement, to wit:

JANE A. COY and others
vs.
CHARLES MASON.

Joinder in demurrer and replication.

Filed October 17th, 1853.

T. S. PARVIN, *Clerk.*

SMITH, MCKINLAY & POOR.

And afterwards, to wit, on the said day the parties filed their agreed state of facts in the words and figures following, to wit:

Agreement.

JANE A. COY
vs.
CHAS. MASON.

U. S. district court for the southern district of Iowa.

It is agreed in this case:

1st. That the answer in this case is not to be considered as overruling the demurrer, but that all the pleadings in the case shall be taken up and considered by the court in their proper order.

2d. That the judge of the district court, although he may decide the demurrer sufficient, shall nevertheless be requested to decide upon the merits of the case, so that, if it should be taken to the Supreme Court, the entire case may be taken before that tribunal at once.

3d. That each party desires all the questions raised to be fairly decided on their merits, that no technical objections are therefore to be made by either party, and that the court is to construe every pleading, however informal, according to its fair import, and give it effect accordingly.

4th. That the following are substantially the facts of the case:

Elizabeth Cardinell was a half-breed of the Sac and Fox nation of Indians, and died in 1826, leaving Julien Cardinell and his four brothers, St. Paul, Eustace, Eli, and Pierre, her children, whose father was a white man. Julien was born in 1821, and his brothers prior to the year 1824. All the children of the said Elizabeth were living on the 30th of June, 1831, and all, except Julien, died unmarried before 1840, leaving no children. In 1848 Julien conveyed to Coy and Brace, by a deed which is to be produced in court and speak for itself. Coy died in 1849, leaving the present plaintiff as his widow and a family of children. Brace died about the same time, leaving also a widow and children, who reside in Iowa.

The title of the half-breeds of the Sac and Fox nation of Indians appears by the treaty of August 4th, 1824, and the act of Congress of June 30th, 1834. It is admitted that there were one hundred and

one true original half-breeds who were entitled to shares. The record of the partition suit is to be regarded as in evidence, and either party may use any portion of it in the Supreme Court, whether the same is used in the district court or not, but the following facts are admitted to be true, unless contradicted by the record: The suit for partition was commenced in the spring of 1840. Legal notice thereof was given by publication, and no other service was made on any of the defendants in that suit. The case would have regularly come up for hearing in October, 1840, and was postponed till April following, to give more abundant time for all persons interested to appear and present their claims. Marsh, Lee and Delevan were defendants in that suit. They claimed upwards of sixty shares, and among them were the one and two-third shares, as set forth in the petition in this suit.

In the judgment of partition forty-one shares were allowed them. Elizabeth Cardinell is the same person as Elizabeth Antaga, and is a sister of Euphrazine Antaga.

The defendant in this suit has become a purchaser of the interests owned by Marsh, Lee and Delevan, as will be more fully shown by their deed to him, which is to be filed in this case and used as testimony. More than $100,000 of the purchase money remains unpaid. Marsh, Lee and Delevan are now residents of the State of Iowa.

At the time of the partition Julien Cardinell was absent from the Territory of Iowa, residing in Prairie du Chien, more than 200 miles distant. The country at that time was new. He was ignorant and illiterate. There was no guardian appointed for him, nor any person present in court to represent his rights. There is no exhibit on record tending to show that Marsh, Lee and Delevan, or either of them, had any right to the shares of the said Julien, or to any interest derived from either of his brothers, or from his mother. The half-breed tract contains about 120,000 acres of land. Keokuk is a large town situated on the tract.

The claimants in the tract are very numerous, amounting to several hundred. It would be impracticable to make them all parties. In the partition suit no one but Marsh, Lee and Delevan laid claim to any share under any of the said Cardinells, with the exception of one-half of one share which was drawn by Ebenezer D. Ayres.

The whole tract was divided and no part was set off to the said Julien, and no mention is made of his rights in said record. He had no guardian and no notice, except the constructive notice by newspaper publication in Iowa.

The foregoing statement of facts is to be filed in this case, and have the same force and effect as though they had been regularly sworn to by competent witnesses.

CHAS. MASON.

Admitted for this case, and for it only.

SMITH, McKINLEY & POOR,
Solicitors for complainants.

Appearance of defendant.

Messrs. SMITH, MCKINLEY & POOR.

GENTLEMEN: If the foregoing agreement is satisfactory to you, I hereby authorize you to enter my appearance in this suit at the next term of the said district court for the southern district of Iowa.

Yours, &c.,

CHARLES MASON.

Washington, Sept. 24th, '53.

Endorsement.

On the back of the same is the following endorsement, to wit:

JANE A. COY and others }
vs. }
CHARLES MASON. }

Statement of facts agreed upon in this case.

Filed, October 17, 1853.

T. S. PARVIN, *Clerk.*

Exhibit A.

Deed from Julian Cardinell to A. B. Coy and Peter A. R. Brace.

In the words and figures following, to wit:

(Copy.)

Whereas, Elizabeth Cardinell, formerly Elizabeth Antallia, in her lifetime, had an interest in a tract of land lying on the Des Moine and Mississippi rivers, reserved by a treaty made at Washington in the District of Columbia, on the fourth day of August, in the year of our Lord one thousand eight hundred and twenty-four, for the half-breeds of the Sac and Fox nations of Indians, she having been one of said half-breeds; and whereas she has departed this life, and the undersigned, Julian Cardinal, is one of her lawful children and her only living heir, and is desirous of selling all such right as he has in said reservation:

Now, therefore, I, the said Julian Cardinell, heir of the said Elizabeth as aforesaid, in consideration of the sum of three hundred dollars, to me in hand paid by A. B. Coy and Peter A. R. Brace, of Prairie du Chien, in the county of Crawford, Wis. Ter., the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, alien, enfeoff and confirm all the right, title, interest and estate and claim whatsoever belonging to me, of, in and to the lands reserved for the use of the said half-breeds by the treaty aforesaid, whether descended from my said mother as however else acquired by me, which lands lie between the Des Moines and Mississippi rivers, bounded eastwardly by the Mississippi, and southwardly by the Des Moine rivers, and northwardly by the line designated by the treaty afore-

said, the title of which land has been vested in said half-breeds by act of Congress of June, eighteen hundred and thirty-four, with liberty to convey the same: to have and to hold the same *said* land, and all my right, title, interest, estate and claim, and all rights and privileges and appurtenances thereunto belonging, unto them the said Coy and Brace, their heirs and assigns forever. And I, the said Julian Cardinell, covenant with the said Coy and Brace that I have not assigned or conveyed heretofore my or any interest in said lands; and that I will hereafter make and execute any other deed or conveyance to said Coy and Brace concerning said land or such right therein as I inherited from my mother, the said Elizabeth, or which I may derive from my brother, now deceased, that they may request, at their costs.

And I hereby constitute and appoint the said Coy and Brace my lawful attorneys, in my name *in my name* to ask for, demand, receive, sue for, recover and possess all my rights in said lands, and to use my name in all matters and proceedings relating to said reservation, in the same manner and with the same effect as if *if* I were present personally.

In testimony whereof, I have hereunto set my hand seal this twenty-fifth day of February, in the year of our Lord eighteen hundred and forty-eight.

JULIAN his ⋈ mark. CARDINELL. [SEAL.]

Signed, sealed and delivered in presence of
O. P. MARTIN,
JOHN ANDREWS,
JOHN WARD.

Before me, Samuel G. Bassett, a justice of the peace in and for the county of Crawford, Wisconsin Territory, this day personally came Julian Cardinell, the within named grantor, who is personally known to me to be the identical person named who signed and sealed the foregoing deed of bargain and sale from him to Coy and Brace, and acknowledged the said deed to be his own act and deed for the purposes and uses therein mentioned.

In testimony whereof, I have hereunto set my hand and seal this twenty-fifth day of February, A. D. 1848.

SAM'L G. BASSETT. [L. S.]

TERRITORY OF WISCONSIN,
County of Crawford, ss:

Be it remembered, that on the 26th day of February, A. D. 1848, personally appeared before me, the undersigned judge of probate in and for the county and Territory aforesaid, Julien Cardinell, known to me to be the identical person whose signature appears to the foregoing instrument of writing, and acknowledged the same to be his free act and deed, and for the uses and purposes therein expressed.

In testimony whereof, I have hereunto set my hand and affixed the seal of our said court of probate at Prairie du Chien, this twenty-sixth day of February, A. D. one thousand eight hundred and forty-eight.

J. BRISBANE, *Judge of probate,*
Crawford county, Wis. Ter.

Filed, October 17, '53.

T. L. PARVIN, *Clerk.*

Filed for record, March 13, 1847, 9 o'clock, a. m.
Recorded March 28th, 1848, Deed book No. 8, page 289, 290.

H. C. McMURPHY, *Recorder,*
By ROBT. A. RUNELL, *Deputy.*

Fees—$1 00. Pd.

Exhibit B.

Deed from Marsh, Lee and Delevan to Charles Mason.

In the words and figures following, to wit:

This indenture, made this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and fifty-two, between Samuel Marsh, William E. Lee and Edward C. Delevan, of the State of New York, trustees, &c., parties of the first part, and Charles Mason, of the city of Burlington, in the State of Iowa, party of the second part, witnesseth, that the said parties of the first part, in consideration of the sum of one hundred and sixty thousand dollars, lawful money of the United States of America, to them to be paid by a certain mortgage bearing date and to be recorded simultaneously with these presents by the said party of the second part, made, executed and delivered to Samuel Marsh and Edward C. Delavan, two of the parties of the first part, trustees, &c., the receipt whereof is hereby acknowledged, have bargained, sold, aliened, released, conveyed and confirmed, and by these presents do bargain, sell, alien, release, convey and confirm unto the said party of the second part, his heirs and assigns forever, all and singular the rights, title, interest, property and estate of the said parties of the first part, of, in and to all those lands not heretofore sold and conveyed by them, known as the Half-breed Tract, or the Half-breed Sac and Fox Reservation, situated in the county of Lee, and State of Iowa; and especially all and singular the lots and parcels of land in said Half-breed Tract, particularly described as follows, to wit:

In township (65) sixty-five north, range (4) four west: the fractional southwest quarter of section (19) nineteen, and the fractional northwest quarter of section (30) thirty.

In township (67) sixty-seven north, range (4) four west: the fractional south half of section (7) seven, and the fractional north half of section (18) eighteen.

In township (65) sixty-five north, range (5) five west: the southeast quarter and the fractional north half of section (6) six; the fractional

south half of section (7) seven; the southwest quarter of section (8) eight; the southeast quarter, and the southeast quarter of the southwest quarter of section (12) twelve; the northeast quarter, and the west half of the southeast quarter of section (14) fourteen; the northwest quarter of section (17) seventeen; the northeast quarter of section (19) nineteen; the northeast quarter, the southwest quarter, and the west half of the southeast quarter of section (21) twenty-one; the west half of the northwest quarter of section (22) twenty-two; the fractional southwest quarter of section (25) twenty-five; the fractional southeast quarter of section (26) twenty-six; the east half of the northeast quarter, and the north half of the northwest quarter of section (27) twenty-seven; the southwest quarter, the west half of the southeast quarter, the southeast quarter of the southeast quarter, and the south half of the northeast quarter of the southeast quarter of section (28) twenty-eight; the south half of the south half of section (29) twenty-nine; and the fractional south half of section (30) thirty.

In township (65) sixty-five north, range (6) six west: the east half of the northeast quarter, the southwest quarter of the northwest quarter and the northeast quarter of the northwest quarter of section (1) one; the fractional south half of section (11) eleven; the fractional south half of section (24) twenty-four, and the whole of fractional section (25) twenty-five.

In township (66) sixty-six north, range (5) five west: the fractional southeast quarter of section (3) three; the southwest quarter, the west half of the southeast quarter, and the north half of section six (6); the north half of section (7) seven, the west half of the southeast quarter of section (8) eight; the east half of the southwest quarter of section (9) nine; the fractional southwest quarter and the fractional northeast quarter of section (10) ten; the fractional southeast quarter of section (11) eleven; the fractional southwest quarter of section (12) twelve; the northwest quarter of section fifteen (15); the northwest quarter of section (16) sixteen; the southwest quarter of section (18) eighteen; the southwest quarter of section (21) twenty-one; the east half of the southeast quarter of section (22) twenty-two; the northwest quarter of section (23) twenty-three; the east half of the southeast quarter of section (24) twenty-four; the south half of section (26) twenty-six; the south half of section (27) twenty-seven; the south half of section (28) twenty-eight; the northeast quarter and the south half of section (29) twenty-nine; the southwest quarter of the southeast quarter, the east half of the southeast quarter, the north half of the southwest quarter, and the north half of section (30) thirty; the west half of the northwest quarter of section (31) thirty-one; the north half of section (32) thirty-two; the north half of section (33) thirty-three; the whole of section (34) thirty-four, and the fractional southeast quarter of section (36) thirty-six.

In township (66) sixty-six north, range (6) six west: the south half of the southeast quarter, the west half of the northwest quarter, and the west half of the southwest quarter of section (1) one; the east half and the southwest quarter of section (2) two; the whole of section (3) three;

the whole of section (5) five; the north half of section (6) six; the north half of section (7) seven; the north half of section (8) eight; the southwest quarter of section (9) nine; the east half of the northwest quarter of section (10) ten; the southeast quarter, the east half of the southwest quarter, and the north half of section (11) eleven; the south half of section (13) thirteen; the southeast quarter and the northwest quarter of section (14) fourteen; the southwest quarter and the north half of section (15) fifteen; the east half of section (16) sixteen; the southwest quarter of section (17) seventeen; the southeast quarter of section (18) eighteen; the northwest quarter of section (20) twenty; and the northeast quarter of section (22) twenty-two; the northwest quarter, and the east half of section (23) twenty-three; the whole of section (24) twenty-four; the southeast quarter of section (25) twenty-five; the south half of section (26) twenty-six; the west half of section (27) twenty-seven; the whole of section (28) twenty-eight; the northeast quarter and the west half of the southeast quarter of section (33) thirty-three; the southeast quarter of section thirty-five (35), and the east half of section (36) thirty-six.

In township (66) sixty-six north, range (7) seven west: the north half of section (1) one; the fractional east half of section (2) two; the fractional northwest quarter of section (3) three; the fractional northeast quarter of section (4) four; the fractional northwest quarter of section (5) five, and the fractional north half of section (12) twelve.

In township (67) sixty-seven north, range (5) five west: the southwest fractional quarter of section (1) one; the fractional southeast quarter of section (2) two; the fractional west half of section (9) nine; the southeast quarter and the south half of the northeast quarter of section (11) eleven; the southeast quarter and the west half of section (12) twelve; the fractional east half of section (13) thirteen; the northeast quarter of section (14) fourteen; the northwest quarter of section (15) fifteen; the northwest quarter of section (16) sixteen; the southwest quarter of section (17) seventeen; the east half of section (18) eighteen; the north half of section (19) nineteen; the northwest quarter and the west half of the southeast quarter of section (21) twenty-one; the east half of section (22) twenty-two; the west half of section (23) twenty-three; the north fractional half of section (26) twenty-six; the northwest quarter of the northwest quarter, and the east half of the southwest quarter of section (28) twenty-eight; the southwest quarter, the west half of the southeast quarter, and the northeast quarter of the southeast quarter of section (29) twenty-nine; the south half of section (30) thirty; the southeast quarter of section (31) thirty-one; the east half of section (33) thirty-three; the whole of fractional section thirty-four, and the fractional northwest quarter of (35) thirty-five.

In township (67) sixty-seven north, range (6) six west: the south fractional half of section (7) seven; the east fractional half of section (10) ten; the east half of section (13) thirteen; the south half of section (14) fourteen; the north half of section (15) fifteen; the south half of section (17) seventeen; the northwest quarter and the south half of sec-

tion (18) eighteen; the northwest quarter of section (20) twenty; the south half of section (21) twenty-one; the northeast quarter of section twenty-three (23); the whole of section (25) twenty-five; the southeast quarter and the east half of the northeast quarter of section (26) twenty-six; the east (40) forty acres of the southeast quarter, the west half of the southwest quarter, the northeast quarter of the southwest quarter and the north half of section (27) twenty-seven; the northeast quarter of section (28) twenty-eight; the north half of section (29) twenty-nine; the whole of section thirty-three; the southwest quarter of the northeast quarter, the east half of the northeast quarter and the southeast, southwest and northwest quarter of section (34) thirty-four; and the whole of sections (35) thirty-five and (36) thirty-six.

In township (67) sixty-seven north, range (7) seven west: the south fractional half of section (7) seven; the southwest fractional quarter of section (8) eight; the southwest quarter of section (16) sixteen; the southeast quarter and the northwest quarter of section (17) seventeen; the north half of section (18) eighteen; the west (30) thirty acres of the fractional northwest quarter of section (19) nineteen; the northwest quarter and the southeast quarter of section (20) twenty; the northeast quarter of section (23) twenty-three; the southwest quarter of section (25) twenty-five; the south half of section (26) twenty-six; the west half of the northeast quarter, and the northwest quarter of section (28) twenty eight; the whole of fractional section (32) thirty-two; the southeast quarter and the north half of section (33) thirty-three; the southwest quarter of section (34), and the northwest quarter, the southeast quarter, and the east half of the southwest quarter of section (36) thirty-six.

In township (67) sixty-seven north, range (8) eight west: the north lot, the middle lot, and the south lot, so called, comprising the gore of land bounded eastwardly by the township line, northerly by the northern boundary line of the tract, and southwesterly by the Des Moines river.

Also the undivided interest of the parties of the first part in and to the tract of land, one mile square, known as the Town of Montrose, situated on the westerly side of the Mississippi river, at the head of the Des Moines Rapids; and in and to an island in the Des Moines river, known as "the cut-off."

Also the following blocks and lots of ground in the city of Keokuk, in the said county of Lee, to wit: Lots numbers two (2), (5) five, and (7) seven, in block number (3) three; lot (11) eleven, in block (4) four; lot (12) twelve, in block (6) six; lots (5) five and (6) six, in block (7) seven; lot (11), in block (9) nine; lot (9) nine, in block (13) thirteen; lot (9), in block (14) fourteen; lots (1) one and (12) twelve, in block (17) seventeen; lots (7) seven, (8) eight, and (9) nine, in block (18) eighteen; lots (3) three and (4) four, in block (19) nineteen; lots (9) nine, (11) eleven, and (12) twelve, in block (21) twenty-one; lots (5) five, (6) six, (7) seven, and (8) eight, in block (22) twenty-two; lot (10) ten, in block (29) twenty-nine; lots (9)

nine and (10) ten, in block (33) thirty-three; lots (4) four, (5) five, and (6) six, in block (40) forty; lots (1) one, (2) two, and (3) three, in block (42) forty-two; lots (7) seven, (8) eight, and (9) nine, in block (46) forty-six; lots (1) one, (2) two, and (3) three, in block (53) fifty-three; lots (4) four, (5) five, and (6) six, in block (57) fifty-seven; lots (7) seven, (8) eight, and (9) nine, in block (65) sixty-five; the whole of block (71) seventy-one; lots (1) one, (2) two, (3) three, (4) four, (5) five, and (6) six, in block (76) seventy-six; the whole of block (77) seventy-seven; lots (7) seven, (8) eight, and (9) nine, in block (78) seventy-eight; lots (1) one, (2) two, and (3) three, in block (81) eighty-one; lots (9) nine, (10) ten, (11) eleven, and (12) twelve, in block (82) eighty-two; lots (5) five, (6) six, (7) seven, and (8) eight, in block (83) eighty-three; lots (1) one, (2) two, (3) three, (4) four, and (5) five, in block (84) eighty-four; lots (1) one, (2) two, (3) three, (4) four, (5) five, and (6) six, in block (87) eighty-seven; lots (7) seven, (8) eight, (9) nine, (10) ten, and (11) eleven, in block (93) ninety-three; lots (7) seven and (8) eight, in block (107) one hundred and seven; lots (1) one, (2) two, (3) three, (4) four, (5) five, and (6) six, in block (114) one hundred and fourteen; lots (1) one, (2) two, (3) three, (4) four, (5) five, and (6) six, in block (117) one hundred and seventeen; the whole of blocks (118) one hundred and eighteen and (122) one hundred and twenty-two; lots (7) seven, (8) eight, (9) nine, (10) ten, (11) eleven, and (12) twelve, in block (132) one hundred and thirty-two; the whole of block (133) one hundred and thirty-three; lots (1) one, (2) two, (3) three, (4) four, (5) five, and (6) six, in block (134) one hundred and thirty-four; lots (1) one, (2) two, (3) three, and (6) six, in block (142) one hundred and forty-two; the whole of block (144) one hundred and forty-four, (145) one hundred and forty-five, (146) one hundred and forty-six, and (147) one hundred and forty-seven; lots (7) seven, (8) eight, (9) nine, (10) ten, (11) eleven, and (12) twelve, in block (148) one hundred and forty-eight; the whole of block (150) one hundred and fifty; lots (7) seven, (8) eight, (9) nine, (10) ten, (11) eleven, and (12) twelve, in block (151) one hundred and fifty-one; lots (1) one, (2) two, (3) three, (4) four, (5) five, and (6) six, in block (153) one hundred and fifty-three; the whole of block (158) one hundred and fifty-eight; lots (7) seven, (8) eight, (9) nine, (10) ten, (11) eleven, and (12) twelve, in block (159) one hundred and fifty-nine; the whole of block (162) one hundred and sixty-two, (163) one hundred and sixty-three, and (164) one hundred and sixty-four; lots (7) seven, (8) eight, (9) nine, (10) ten, (11) eleven, and (12) twelve, in block (166) one hundred and sixty-six; the whole of block (170) one hundred and seventy, and (171) one hundred and seventy-one; lot (4) four, (5) five, (7) seven, (8) eight, and (9) nine, in block (172) one hundred and seventy-two; the whole of block (174) one hundred and seventy-four; lots (1) one, (2) two, (3) three, (4) four, (5) five, and (6) six, in block (175) one hundred and seventy-five; lots (1) one, (2) two, (3) three, (4) four, (5) five, and (6) six, in block (178) one hundred and seventy-eight; the whole of

blocks (179) one hundred and seventy-nine, and (180) one hundred and eighty; lots (7) seven, (8) eight, (9) nine, (10) ten, (11) eleven, and (12) twelve, in block (181) one hundred and eighty-one; the whole of block (192) one hundred and ninety-two; lots (7) seven, (8) eight, (9) nine, (10) ten, (11) eleven, and (12) twelve, in block (193) one hundred and ninety-three; the whole of block (195) one hundred and ninety-five, (196) one hundred and ninety-six, (197) one hundred and ninety-seven, and (198) one hundred and ninety-eight; lots (1) one, (2) two, (3) three, (4) four, (5) five, and (6) six, in block (199) one hundred and ninety-nine; lots (3) three, (4) four, (9) nine, (10) ten, (11) eleven, and (12) twelve, in block (201) two hundred and one; the whole of blocks (202) two hundred and two, and (203) two hundred and three; also the whole of those portions of streets forming the boundaries of the city plot which lie in front of lots and blocks above described; and the one-half of such portions of all other streets as lie in front of and adjacent to the others of the above described lots and blocks; subject nevertheless to the public right of way in and over said streets.

Also all the following lots of land in the town of Nashville, in said half-breed tract, to wit: lots Nos. (5) five, (6) six, (8) eight, (9) nine, (10) ten, (11) eleven, (20) twenty, (22) twenty-two, (24) twenty-four, (26) twenty-six, (27) twenty-seven, (31) thirty-one, (33) thirty-three, (34) thirty-four, (35) thirty-five, (37) thirty-seven, (39) thirty-nine, (42) forty-two, (43) forty-three, (44) forty-four, (45) forty-five, (48) forty-eight, (49) forty-nine, (50) fifty, (52) fifty-two, (58) fifty-eight, (60) sixty, (62) sixty-two, (63) sixty-three, (64) sixty-four, (66) sixty-six, (68) sixty-eight, (70) seventy, (71) seventy-one, (73) seventy-three, (75) seventy-five, (80) eighty, (83) eighty-three, (89) eighty-nine, (96) ninety-six, (98) ninety-eight, (102) one hundred and two, (108) one hundred and eight, (110) one hundred and ten, (112) one hundred and twelve, (115) one hundred and fifteen, (120) one hundred and twenty, (121) one hundred and twenty-one, (123) one hundred and twenty-three, (124) one hundred and twenty-four, (125) one hundred and twenty-five, (126) one hundred and twenty-six, (130) one hundred and thirty, (135) one hundred and thirty-five, (136) one hundred and thirty-six, (138) one hundred and thirty-eight, (139) one hundred and thirty-nine, (140) one hundred and forty, (141) one hundred and forty-one, (150) one hundred and fifty, (152) one hundred and fifty-two, (154) one hundred and fifty-four, (156) one hundred and fifty-six, (157) one hundred and fifty-seven, (159) one hundred and fifty-nine, (161) one hundred and sixty-one, (162) one hundred and sixty-two, (163) one hundred and sixty three, (165) one hundred and sixty-five, (168) one hundred and sixty-eight, (169) one hundred and sixty-nine, (170) one hundred and seventy, (171) one hundred and seventy-one, (174) one hundred and seventy-four, (175) one hundred and seventy-five, (176) one hundred and seventy-six, (178) one hundred and seventy-eight, (184) one hundred and eighty-four, (188) one hundred and eighty-eight, (190) one hundred and ninety, (191) one hundred and

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ninety-one, (192), one hundred and ninety-four (194), one hundred and ninety-six (196), one hundred and ninety-nine (199), (201) two hundred and one, (210) two hundred and ten, and (211) two hundred and eleven; together with the whole of those portions of water street which lie in front of lots above described, and the one half of such portions of all other streets as lie in front and adjacent to the others of the above described lots; subject nevertheless to the public right of way in and over said streets; together with all and singular the appurtenances, and also the estate, right, title, interest, property, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, or those whom they represent, and for whom they are trustees, of, in and to the same, and every part and parcel thereof: to have and to hold the above mentioned premises hereby conveyed or intended so to be, with the appurtenances unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

SAMUEL MARSH, [L. S.]
WM. ELLIOTT LEE, [L. S.]
EDWARD C. DELAVAN. [L. S.]

Sealed and delivered in the presence of—
HIRAM BAMSEY, JOHN F. PERKINS.

STATE OF NEW YORK, *City and county of Albany, ss:*

I, John F. Perkins, a notary public of the city and county of Albany, hereby certify that on this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and fifty-two, Samuel Marsh, Wm. Elliot Lee and Edward C. Delavan, who are each and all personally known to me to be the identical persons whose names are affixed to the aforegoing deed as grantors, all appeared before me and acknowledged the said instrument to be their voluntary act and deed.

The words "eighth" and "eight hundred," interlined, and the word "all."

[L. S.] JOHN F. PERKINS, *Notary public.*

On the back of said deed is the following endorsement, to wit:

SAMUEL MARSH,
WM. E. LEE, and
EDWARD C. DELAVAN,
to
CHARLES MASON. } Deed.

Filed for record, July 7th, 1852, at 2 o'clock, p. m., and duly recorded in Deed book No. 13, page 54 and following.

ROBERT McFARLAND, *Recorder, L. C.*
By ERIE J. LEECH, *Deputy.*

Filed, October 10th, 1853.

T. S. PARVIN, *Clerk,*
By O. C. WIGHTMAN, *Deputy.*

And afterwards, to wit, on the 21st day of October, A. D. 1853, being at the October term of the district court aforesaid, sitting in the southern division aforesaid, the following further proceedings were had, to wit:

Decree.

JANE A. COY and others
vs.
CHARLES MASON.

This came on to be heard on demurrer to the bill and joinder thereon. The court after duly considering the same overrules the said demurrer, and proceeds to the bill and answer and replication, and having examined the evidence, find the issue in favor of the defendant; and thereupon, upon consideration thereof, it is ordered, adjudged and decreed, that the prayer of the bill be denied and that the defendant have and recover of the plaintiffs costs of suit, taxed at $, and that execution issue therefor.

And thereupon the plaintiff, by her counsel, prays an appeal to the Supreme Court, which is granted.

Bond in appeal given by plaintiff and approved by the court.

Appeal Bond.

Know all men by these presents, that the undersigned are held and firmly bound unto Charles Mason, in the penal sum of one hundred dollars, on condition that whereas Jane A. Coy has appealed from the judgment and proceedings of the district court of the United States, for the district of Iowa, in a certain proceeding wherein she, for herself and as guardian of her infant children, was plaintiff, and the said Mason defendant, at the October term of said court, held at Burlington, in October, 1853. Now, if the said Jane A. Coy prosecute her appeal to the Supreme Court of the United States with effect, and shall pay all damages and costs that may be awarded against her, should the judgment of said district court be affirmed, then this obligation to be void.

Signed and sealed in October, 1853.

JANE A. COY, [SEAL.]
SMITH & McKINLAY, [SEAL.]

Approved by me. J. J. DYER, *Judge.*

UNITED STATES OF AMERICA,
District of Iowa, ss:

I, T. S. Parvin, clerk of the United States district court, within and for the district of Iowa, do certify that the foregoing is a true transcript from the records in my office of the original papers and records in the said case of Jane A. Coy and others vs. Charles Mason, tried and determined at the October term of said court, at Burlington, in the southern division of said district.

In witness whereof I have hereto set my hand, at Burlington, and affixed the seal of said court, this 5th day of December, A. D. 1853. [SEAL.]

T. S. PARVIN,
Clerk U. S. D. C., district of Iowa.

DISTRICT OF IOWA, *ss:*

I hereby certify that T. S. Parvin, who has signed the foregoing certificate as clerk, &c., is the clerk of the U. S. district court for the district of Iowa; that the seal thereto attached is the seal of said court; and that said certificate is in due form of law.

Witness my hand, at Du Buque, in said district, this 17th day of December, A. D. 1853.

J. J. DYER,
U. S. district judge, for district of Iowa.

Assignment of errors.

JANE A. COY et al.
vs.
CHARLES MASON.

Now come the said plaintiffs by P. Smith, their counsel, and say that is error in the record of this case in this, to wit:

1. The court erred in dismissing the plaintiff's bill and giving judgment for the defendant, whereas it should have been rendered for the plaintiffs.

2. The court erred in deciding that the decree of partition was valid or conclusive, whereas it should been held invalid and void, and the rights of the plaintiffs were not concluded.

3. The court erred in deciding that the rights of the plaintiff were not valid, and in deciding that the defence was valid.

P. SMITH, *for plaintiff.*